

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
EL DORADO IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE AMERICAN RIVER DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1-4
1	Definitions.....	4-7
2	Term of Contract.....	8-9
3	Water to be Made Available and Delivered to the Contractor.....	9-12
4	Time for Delivery of Water	12-13
5	Point of Diversion and Responsibility for Distribution of Water	13-14
6	Measurement of Water Within the Service Area	15-16
7	Rates and Method of Payment for Water.....	16-21
8	Omitted	21
9	Sales, Transfers, or Exchanges of Water	21-23
10	Application of Payments and Adjustments.....	23
11	Temporary Reductions--Return Flows	24
12	Constraints on the Availability of Water	24-25
13	Omitted	25
14	Rules and Regulations.....	25
15	Water and Air Pollution Control.....	26
16	Quality of Water	26
17	Water Acquired by the Contractor Other Than From the United States.....	26-28
18	Opinions and Determinations	28

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
19	Coordination and Cooperation.....	28-30
20	Charges for Delinquent Payments	30
21	Equal Opportunity.....	30-32
22	General Obligation--Benefits Conditioned Upon Payment	32
23	Compliance With Civil Rights Laws and Regulations	32
24	Omitted	32
25	Contractor to Pay Certain Miscellaneous Costs.....	33
26	Water Conservation	33-34
27	Existing or Acquired Water or Water Rights.....	34
28	Omitted	35
29	Contingent on Appropriation or Allotment of Funds	35
30	Books, Records, and Reports.....	35
31	Assignment Limited--Successors and Assigns Obligated	35
32	Severability	36
33	Resolution of Disputes.....	36-37
34	Officials Not to Benefit.....	37
35	Changes in Contractor's Service Area	37
36	Federal Laws	37-38
37	Notices	38
38	Confirmation of Contract.....	38
	Signature Page	39

Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 EL DORADO IRRIGATION DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM AMERICAN RIVER DIVISION

10 THIS CONTRACT, made this ____ day of _____, 20____, in
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
16 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between
17 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and EL
18 DORADO IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency
19 of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for

24 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
25 and restoration, generation and distribution of electric energy, salinity control, navigation and
26 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
27 and the San Joaquin River and their tributaries; and

28 [2nd] WHEREAS, the United States constructed Folsom Dam and Reservoir,
29 hereinafter collectively referred to as the American River Division facilities, which will be used
30 in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

31 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
32 pursuant to California law for operation of the Project; and

33 [4th] WHEREAS, the Contractor and the United States entered into Contract
34 No. 14-06-200-1357A, as amended, which established terms for the delivery to the Contractor of
35 Project Water from the American River Division from January 1, 1965, through December 31,
36 2004, to the El Dorado Hills area (hereinafter referred to as the El Dorado Hills contract); and

37 [4.1] WHEREAS, the County of El Dorado and the United States entered into Contract
38 No. 14-06-200-7312A, dated July 25, 1958, which established terms for the delivery to the
39 Contractor of Project Water from the American River Division through October 31, 1999, to the
40 Lake Hills Estate area (hereinafter referred to as the Lake Hills Estates contract); and

41 [4.2] WHEREAS, the County of El Dorado officially assigned the Lake Hills Estates
42 contract to the Contractor on December 18, 1973, with the approval of the United States; and

43 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
44 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
45 interim renewal contracts identified as Contract Nos. 14-06-200-7312A-IR1, 14-06-200-7312A-
46 IR2, 14-06-200-7312A-IR3, 14-06-200-7312A-IR4, 14-06-200-7312A-IR5, 14-06-200-7312A-
47 IR6, and 14-06-200-7312A-IR7, the current of which is hereinafter referred to as the Existing
48 Contract, which provided for the continued water service to the Contractor from March 1, 2004,
49 through February 29, 2006; and

50 [5.1] WHEREAS, Article 3(h) of Contract No. 14-06-200-7312A-IR2 states that the El
51 Dorado Hills and Lake Hills Estates contracts will be fully integrated into one long-term renewal
52 contract; and

53 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of
54 Existing Contracts following completion of appropriate environmental documentation, including
55 a programmatic environmental impact statement (PEIS) pursuant to the National Environmental
56 Policy Act (NEPA), analyzing the direct and indirect impacts and benefits of implementing the
57 CVPIA and the potential renewal of all existing contracts for Project Water; and

58 [6.1] WHEREAS, the Contracting Officer and the Contractor are entering into this
59 contract pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act
60 (CVPIA); and

61 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
62 environmental review necessary to provide for long-term renewal of the El Dorado Hills and
63 Lake Hills Estates contracts; and

64 [8th] WHEREAS, the Contractor has requested the long-term renewal of the El Dorado
65 Hills and Lake Hills Estates contracts, pursuant to the terms of these contracts, Federal
66 Reclamation law, and the laws of the State of California, for water service from the Central
67 Valley Project; and

68 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
69 of its obligations under the El Dorado Hills and Lake Hills Estates contracts; and

70 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
71 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
72 reasonable and beneficial use and/or has demonstrated projected future demand for water use
73 such that the Contractor has the capability and expects to utilize fully for reasonable and
74 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
75 and

76 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
77 agricultural areas within California for more than 50 years, and is considered by the Contractor
78 as an essential portion of its water supply; and

79 [12th] WHEREAS, the economies of regions within the Project, including the
80 Contractor's, depend upon the continued availability of water, including water service from the
81 Project; and

82 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
83 partnerships to pursue measures to improve water supply, water quality, and reliability of the
84 Project for all Project purposes; and

85 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
86 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
87 repayment of the Project as required by law; to guard reasonably against Project Water
88 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
89 and to comply with all applicable environmental statutes, all consistent with the legal obligations
90 of the United States relative to the Project; and

91 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
92 relationship in order to achieve their mutual goals; and

93 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
94 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

95 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
96 contained, it is hereby mutually agreed by the parties hereto as follows:

97 DEFINITIONS

98 1. When used herein unless otherwise distinctly expressed, or manifestly
99 incompatible with the intent of the parties as expressed in this Contract, the term:

100 (a) "Calendar Year" shall mean the period January 1 through December 31,
101 both dates inclusive;

102 (b) "Charges" shall mean the payments required by Federal Reclamation law
103 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined
104 annually by the Contracting Officer pursuant to this Contract;

105 (c) "Condition of Shortage" shall mean a condition respecting the Project
106 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
107 Contract Total;

108 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly
109 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
110 or regulation;

111 (e) "Contract Total" shall mean the maximum amount of water to which the
112 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

113 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
114 permitted to provide Project Water under this Contract as described in Exhibit "A" attached
115 hereto, which may be modified from time to time in accordance with Article 35 of this Contract
116 without amendment of this Contract;

117 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
118 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

119 (h-i) Omitted;

120 (j) "Full Cost Rate" shall mean an annual rate as determined by the
121 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
122 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
123 deficits funded, less payments, over such periods as may be required under Federal Reclamation
124 law; or applicable contract provisions. Interest will accrue on both the construction expenditures
125 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
126 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
127 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes

128 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules
129 and Regulations for the RRA;

130 (k-l) Omitted;

131 (m) "Irrigation Water" shall mean water made available from the Project that
132 is used primarily in the production of agricultural crops or livestock, including domestic use
133 incidental thereto, and watering of livestock;

134 (n) Omitted;

135 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other
136 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
137 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
138 which are kept for personal enjoyment or water delivered to land holdings operated in units of
139 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer
140 that the use of water delivered to any such landholding is a use described in subdivision (m) of
141 this Article;

142 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to
143 the delivery of M&I Water;

144 (q) "Operation and Maintenance" or "O&M" shall mean normal and
145 reasonable care, control, operation, repair, replacement (other than capital replacement), and
146 maintenance of Project facilities;

147 (r) Omitted;

148 (s) "Project" shall mean the Central Valley Project owned by the United
149 States and managed by the Department of the Interior, Bureau of Reclamation;

150 (t) "Project Contractors" shall mean all parties who have water service
151 contracts for Project Water from the Project with the United States pursuant to Federal
152 Reclamation law;

153 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
154 delivered by the Secretary in accordance with the statutes authorizing the Project and in
155 accordance with the terms and conditions of water rights acquired pursuant to California law;

156 (v) "Rates" shall mean the payments determined annually by the Contracting
157 Officer in accordance with the then- current applicable water ratesetting policies for the Project,
158 as described in subdivision (a) of Article 7 of this Contract;

159 (w) "Recent Historic Average" shall mean the most recent five-year average of
160 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its
161 preceding contract(s);

162 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
163 successor, or an authorized representative acting pursuant to any authority of the Secretary and
164 through any agency of the Department of the Interior;

165 (y) "Tiered Pricing Component" shall be the incremental amount to be paid
166 for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

167 (z) "Water Delivered" or "Delivered Water" shall mean Project Water
168 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
169 Officer;

170 (aa) "Water Made Available" shall mean the estimated amount of Project
171 Water that can be delivered to the Contractor for the upcoming Year as declared by the
172 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

173 (bb) "Water Scheduled" shall mean Project Water made available to the
174 Contractor for which times and quantities for delivery have been established by the Contractor
175 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

176 (cc) "Year" shall mean the period from and including March 1 of each
177 Calendar Year through the last day of February of the following Calendar Year.

178 TERM OF CONTRACT

179 2. (a) This Contract shall be effective March 1, 2005, through February 28,
180 2045, and supersedes the Existing Contract. In the event the Contractor wishes to renew this
181 Contract beyond February 28, 2045, the Contractor shall submit a request for renewal in writing
182 to the Contracting Officer no later than two years prior to the date this Contract expires.

183 (b) Omitted.

184 (c) This Contract shall be renewed for successive periods of 40 years each
185 which periods shall be consistent with then-existing Reclamation-wide policy, under terms and
186 conditions mutually agreeable to the parties and consistent with Federal and State law. The
187 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the
188 proposed adoption and application of any revised policy applicable to the delivery of Project
189 M&I Water that would limit the term of any subsequent renewal contract with the Contractor for
190 the furnishing of M&I Water to less than 40 years.

191 (d) The Contracting Officer shall make a determination ten years after the
192 date of execution of this Contract, and every five years thereafter during the term of this
193 Contract, of whether a conversion to a contract under subsection 9(c)(1) of Section 9 of the
194 Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that
195 during the term of this Contract, all authorized Project construction expected to occur will have
196 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all
197 costs that are properly assignable to the Contractor, and agrees further that, at any time after such
198 allocation is made, and subject to satisfaction of the condition set out in this subdivision, this
199 Contract shall, at the request of the Contractor, be converted to a contract under said subsection
200 (c)(1) of Section 9, subject to applicable Federal law and under stated terms and conditions
201 mutually agreeable to the Contractor and the Contracting Officer. A condition for such
202 conversion to occur shall be a determination by the Contracting Officer that, account being taken
203 of the amount credited to return by the Contractor as provided for under Federal Reclamation

204 law, the remaining amount of construction costs assignable for ultimate return by the Contractor
205 can probably be repaid to the United States within the term of a contract under said subsection
206 (c)(1) of Section 9. If the remaining amount of costs that are properly assignable to the
207 Contractor cannot be determined during the term of this Contract, the Contracting Officer shall
208 notify the Contractor, and provide the reason(s) why such a determination could not be made.
209 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so
210 as to permit, upon request of the Contractor and satisfaction of the condition set out above,
211 conversion to a contract under said subsection (c)(1) of Section 9. In the event such
212 determination of costs has not been made at a time which allows conversion of this Contract
213 during the term of this Contract or the Contractor has not requested conversion of this Contract
214 within such term, the parties shall incorporate in any subsequent renewal contract as described in
215 subdivision (c) of this Article a provision that carries forth in substantially identical terms the
216 provisions of this subdivision.

217 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

218 3. (a) During each Year, consistent with all applicable State water rights,
219 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
220 this Contract, the Contracting Officer shall make available for delivery to the Contractor 7,550
221 acre-feet of Project Water for M&I purposes. Water Delivered to the Contractor in accordance
222 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and
223 7 of this Contract.

224 (b) Because the capacity of the Project to deliver Project Water has been
225 constrained in recent years and may be constrained in the future due to many factors including
226 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
227 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
228 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
229 PEIS projected that the Contract Total set forth in this Contract will not be available to the

230 Contractor in many years. During the most recent five years, the Recent Historic Average of
231 water made available to the Contractor's Service Area was 6,716 acre-feet. Nothing in
232 subdivision (b) of this Article shall affect the rights and obligations of the parties under any
233 provision of this Contract.

Deleted: _____

234 (c) The Contractor shall utilize the Project Water in accordance with all
235 applicable legal requirements.

236 (d) The Contractor shall make reasonable and beneficial use of all water
237 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
238 ground-water banking programs, surface water storage programs, and other similar programs
239 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
240 Contractor's Service Area which are consistent with applicable State law and result in use
241 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
242 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
243 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
244 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
245 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
246 compliance with Federal Reclamation Law. Groundwater recharge programs, ground-water
247 banking programs, surface water storage programs, and other similar programs utilizing Project
248 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
249 Service Area may be permitted upon written approval of the Contracting Officer, which approval
250 will be based upon environmental documentation, Project Water rights, and Project operational
251 concerns. The Contracting Officer will address such concerns in regulations, policies, or
252 guidelines.

253 (e) The Contractor shall comply with requirements applicable to the
254 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
255 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),

256 as amended, that are within the Contractor's legal authority to implement. The Existing
257 Contracts, which evidence in excess of 40 years of diversions for M&I purposes of the quantities
258 of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
259 developing an appropriate baseline for biological assessment prepared pursuant to the ESA, and
260 any other needed environmental review. Nothing herein shall be construed to prevent the
261 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
262 respect to any biological opinion or other environmental documentation referred to in this
263 Article.

264 (f) Following the declaration of Water Made Available under Article 4 of this
265 Contract, the Contracting Officer will make a determination whether Project Water, or other
266 water available to the Project, can be made available to the Contractor in addition to the Contract
267 Total under Article 3 of this Contract during the Year without adversely impacting other Project
268 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
269 Contractor prior to making such a determination. If the Contracting Officer determines that
270 Project Water, or other water available to the Project, can be made available to the Contractor,
271 the Contracting Officer will announce the availability of such water and shall so notify the
272 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
273 and other Project Contractors capable of taking such water to determine the most equitable and
274 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
275 water, the Contracting Officer shall make such water available to the Contractor in accordance
276 with applicable statutes, regulations, guidelines, and policies.

277 (g) The Contractor may request permission to reschedule for use during the
278 subsequent Year some or all of the Water Made Available to the Contractor during the current
279 Year referred to as "carryover." The Contractor may request permission to use during the
280 current Year a quantity of Project Water which may be made available by the United States to
281 the Contractor during the subsequent Year referred to as "preuse." The Contracting Officer's

282 written approval may permit such uses in accordance with applicable statutes, regulations,
283 guidelines, and policies.

284 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
285 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
286 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
287 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
288 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
289 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or
290 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
291 contracts.

292 (i) Project Water furnished to the Contractor pursuant to this Contract may be
293 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
294 Contract upon written approval by the Contracting Officer in accordance with the terms and
295 conditions of such approval.

296 (j) The Contracting Officer shall make reasonable efforts to protect the water
297 rights necessary for the Project and to provide the water available under this Contract. The
298 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
299 extent permitted by law, in administrative proceedings related to the Project Water rights;
300 Provided, That the Contracting Officer retains the right to object to the substance of the
301 Contractor's position in such a proceeding; Provided further, That in such proceedings the
302 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
303 Contract to use Project Water.

304 TIME FOR DELIVERY OF WATER

305 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer
306 shall announce the Contracting Officer's expected declaration of the Water Made Available.
307 Such declaration will be expressed in terms of both Water Made Available and the Recent

308 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
309 current operational and hydrologic conditions and a new declaration with changes, if any, to the
310 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
311 operations and the basis of the estimate, with relevant supporting information, upon the written
312 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
313 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

314 (b) On or before each March 1 and at such other times as necessary, the
315 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
316 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
317 United States to the Contractor pursuant to this Contract for the Year commencing on such
318 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water
319 according to the approved schedule for the Year commencing on such March 1.

320 (c) The Contractor shall not schedule Project Water in excess of the quantity
321 of Project Water the Contractor intends to put to reasonable and beneficial use within the
322 Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract
323 during any Year.

324 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
325 Contract, the United States shall deliver Project Water to the Contractor in accordance with the
326 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
327 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable
328 time prior to the date(s) on which the requested change(s) is/are to be implemented.

329 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

330 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
331 Contract shall be delivered to the Contractor at the Contractor's point of diversion in Folsom
332 Lake and any additional point or points of delivery either on Project facilities or another location
333 or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

334 (b) Omitted.

335 (c) The Contractor shall not deliver Project Water to land outside the
336 Contractor's Service Area unless approved in advance by the Contracting Officer.

337 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
338 measured and recorded with equipment furnished, installed, operated, and maintained by the
339 United States, or other appropriate entity as designated by the Contracting Officer at the point or
340 points of delivery established pursuant to subdivision (a) of this Article. Upon the request of
341 either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated,
342 the accuracy of such measurements and shall take any necessary steps to adjust any errors
343 appearing therein. For any period of time when accurate measurements have not been made, the
344 Contracting Officer shall consult with the Contractor prior to making a final determination of the
345 quantity delivered for that period of time.

346 (e) The Contracting Officer shall not be responsible for the control, carriage,
347 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
348 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor
349 shall indemnify the United States, its officers, employees, agents, and assigns on account of
350 damage or claim of damage of any nature whatsoever for which there is legal responsibility,
351 including property damage, personal injury, or death arising out of or connected with the control,
352 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery
353 points, except for any damage or claim arising out of (i) acts or omissions of the Contracting
354 Officer or any of its officers, employees, agents, or assigns with the intent of creating the
355 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
356 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or
357 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a
358 malfunction of facilities owned and/or operated by the United States.

359 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

360 6. (a) The Contractor has established a measuring program satisfactory to the
361 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I
362 purposes is measured at each M&I service connection. The water measuring devices or water
363 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.
364 The Contractor shall be responsible for installing, operating, and maintaining and repairing all
365 such measuring devices and implementing all such water measuring methods at no cost to the
366 United States. The Contractor shall use the information obtained from such water measuring
367 devices or water measuring methods to ensure its proper management of the water, to bill water
368 users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I
369 purposes by customer class as defined in the Contractor's water conservation plan provided for
370 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
371 from establishing and collecting any charges, assessments, or other revenues authorized by
372 California law. The Contractor shall include a summary of all its annual surface water deliveries
373 in the annual report described in subdivision (c) of Article 26.

374 (b) To the extent the information has not otherwise been provided, upon
375 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
376 report describing the measurement devices or water measuring methods being used or to be used
377 to implement subdivision (a) of this Article and identifying the M&I service connections or
378 alternative measurement programs approved by the Contracting Officer, at which such
379 measurement devices or water measuring methods are being used, and, if applicable, identifying
380 the locations at which such devices and/or methods are not yet being used including a time
381 schedule for implementation at such locations. The Contracting Officer shall advise the
382 Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any,
383 of the measuring devices or water measuring methods identified in the Contractor's report and if
384 the Contracting Officer does not respond in such time, they shall be deemed adequate. If the

385 Contracting Officer notifies the Contractor that the measuring devices or methods are
386 inadequate, the parties shall within 60 days following the Contracting Officer's response,
387 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
388 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
389 compliance with subdivision (a) of this Article.

390 (c) All new surface water delivery systems installed within the Contractor's
391 Service Area after the effective date of this Contract shall also comply with the measurement
392 provisions described in subdivision (a) of this Article.

393 (d) The Contractor shall inform the Contracting Officer and the State of
394 California in writing by April 30 of each Year of the monthly volume of surface water delivered
395 within the Contractor's Service Area during the previous Year.

396 (e) The Contractor shall inform the Contracting Officer on or before the
397 20th calendar day of each month of the quantity of M&I Water taken during the preceding month.

398 RATES AND METHOD OF PAYMENT FOR WATER

399 7. (a) The Contractor shall pay the United States as provided in this Article for
400 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
401 accordance with (i) the Secretary's then-existing ratesetting policy for M&I Water. Such
402 ratesetting policies shall be amended, modified, or superseded only through a public notice and
403 comment procedure; (ii) applicable Federal Reclamation law and associated rules and
404 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
405 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to
406 in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
407 Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit
408 "B," as may be revised annually.

409 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,
410 and Tiered Pricing Component as follows:

411 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
412 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
413 period October 1, of the current Calendar Year, through September 30, of the following Calendar
414 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
415 to review and comment on such estimates. On or before September 15 of each Calendar Year,
416 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
417 the period October 1 of the current Calendar Year, through September 30, of the following
418 Calendar Year, and such notification shall revise Exhibit "B."

419 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
420 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component
421 for Project Water for the following Year and the computations and cost allocations upon which
422 those Rates are based. The Contractor shall be allowed not less than two months to review and
423 comment on such computations and cost allocations. By December 31 of each Calendar Year,
424 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
425 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

426 (c) At the time the Contractor submits the initial schedule for the delivery of
427 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
428 Contractor shall make an advance payment to the United States equal to the total amount payable
429 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
430 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
431 Year. Before the end of the first month and before the end of each calendar month thereafter, the
432 Contractor shall make an advance payment to the United States, at the Rate(s) set under
433 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
434 during the second month immediately following. Adjustments between advance payments for
435 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
436 the following month; Provided, That any revised schedule submitted by the Contractor pursuant

437 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
438 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
439 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
440 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
441 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
442 additional Project Water shall be delivered to the Contractor unless and until an advance
443 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
444 between the advance payments for the Water Scheduled and payments for the quantities of Water
445 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
446 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
447 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last
448 day of February.

449 (d) The Contractor shall also make a payment in addition to the Rate(s) in
450 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
451 appropriate Tiered Pricing Component then in effect, before the end of the month following the
452 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered
453 as shown in the water delivery report for the subject month prepared by the Operating Non-
454 Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The
455 water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered
456 Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of
457 Charges shall be made through the adjustment of payments due to the United States for Charges
458 for the next month. Any amount to be paid for past due payment of Charges and the Tiered
459 Pricing Component shall be computed pursuant to Article 20 of this Contract.

460 (e) The Contractor shall pay for any Water Delivered under subdivision (a),
461 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
462 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting

463 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this
464 Contract shall be no more than the otherwise applicable Rate for M&I Water under subdivision
465 (a) of this Article.

466 (f) Payments to be made by the Contractor to the United States under this
467 Contract may be paid from any revenues available to the Contractor.

468 (g) All revenues received by the United States from the Contractor relating to
469 the delivery of Project Water or the delivery of non-Project water through Project facilities shall
470 be allocated and applied in accordance with Federal Reclamation law and the associated rules or
471 regulations, and the then-current Project ratesetting policies for M&I Water.

472 (h) The Contracting Officer shall keep its accounts pertaining to the
473 administration of the financial terms and conditions of its long-term contracts, in accordance
474 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
475 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
476 Contractor a detailed accounting of all Project and Contractor expense allocations, the
477 disposition of all Project and Contractor revenues, and a summary of all water delivery
478 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
479 to resolve any discrepancies or disputes relating to accountings, reports, or information.

480 (i) The parties acknowledge and agree that the efficient administration of this
481 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
482 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,
483 and/or for making and allocating payments, other than those set forth in this Article may be in
484 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
485 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
486 this Contract is in effect without amending this Contract.

487 (j) (1) Beginning at such time as deliveries of Project Water in a Year
488 exceed 80 percent of the Contract Total, then before the end of the month following the month of

489 delivery the Contractor shall make an additional payment to the United States equal to the
490 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
491 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
492 Contract Total, shall equal one-half of the difference between the Rate established under
493 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
494 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
495 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
496 the Rate established under subdivision (a) of this Article and (ii) the M&I Full Cost Water Rate.

497 (2) Omitted.

498 (3) For purposes of determining the applicability of the Tiered Pricing
499 Components pursuant to this Article, Water Delivered shall include Project Water that the
500 Contractor transfers to others but shall not include Project Water transferred to the Contractor
501 nor shall it include the additional water provided to the Contractor under the provisions of
502 subdivision (f) of Article 3 of this Contract.

503 (k) For the term of this Contract, Rates under the respective ratesetting
504 policies will be established to recover only reimbursable O&M (including any deficits) and
505 capital costs of the Project, as those terms are used in the then-current Project ratesetting
506 policies, and interest, where appropriate, except in instances where a minimum Rate is applicable
507 in accordance with the relevant Project ratesetting policy. Changes of significance in practices
508 which implement the Contracting Officer's ratesetting policies will not be implemented until the
509 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
510 impact of the proposed change.

511 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
512 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
513 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
514 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in

515 accordance with the then applicable Project ratesetting policy. If the Contractor is receiving
516 lower Rates and Charges because of inability to pay and is transferring Project Water to another
517 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges
518 for transferred Project Water shall be the Contractor's Rates and Charges and will not be
519 adjusted to reflect the Contractor's inability to pay.

520 (m) Omitted.

521 (n) With respect to the Rates for M&I water, the Contractor asserts that it is
522 not legally obligated to pay any Central Valley Project deficits claimed by the United States to
523 have accrued as of the date of this Contract or deficit-related interest charges thereon. By
524 entering into this Contract, the Contractor does not waive any legal rights or remedies that it may
525 have with respect to such disputed issues. Notwithstanding the execution of this Contract, and
526 payments made hereunder, the Contractor may challenge in the appropriate administrative or
527 judicial forums: (1) the existence, computation, or imposition of any deficit charges accruing
528 during the term of the Existing Contracts and any preceding interim renewal contracts, if
529 applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges
530 or interest in the Rates; (4) the application by the United States of payments made by the
531 Contractor under its Existing Contracts and any preceding interim renewal contract, if
532 applicable; and (5) the application of such payments in the Rates. The Contracting Officer
533 agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling
534 in favor of any other Project M&I contractor on any of these issues, and credits for payments
535 heretofore made, Provided That, the basis for such ruling is applicable to the Contractor.

536 8. Omitted.

537 SALES, TRANSFERS, OR EXCHANGES OF WATER

538 9. (a) The right to receive Project Water provided for in this Contract may be
539 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
540 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,

541 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
542 Water under this Contract may take place without the prior written approval of the Contracting
543 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
544 exchanges shall be approved absent all appropriate environmental documentation, including but
545 not limited to documents prepared pursuant to the NEPA and ESA. Such environmental
546 documentation should include, as appropriate, an analysis of groundwater impacts and economic
547 and social effects, including environmental justice, of the proposed water transfers on both the
548 transferor and transferee.

549 (b) In order to facilitate efficient water management by means of water
550 transfers of the type historically carried out among Project Contractors located within the same
551 geographical area and to allow the Contractor to participate in an accelerated water transfer
552 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
553 all necessary environmental documentation including, but not limited to, documents prepared
554 pursuant to the NEPA and ESA analyzing annual transfers within such geographical areas, and
555 the Contracting Officer shall determine whether such transfers comply with applicable law.
556 Following the completion of the environmental documentation, such transfers addressed in such
557 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
558 require prior written approval by the Contracting Officer. Such environmental documentation
559 and the Contracting Officer's compliance determination shall be reviewed every five years and
560 updated, as necessary, prior to the expiration of the then-existing five-year period. All
561 subsequent environmental documentation shall include an alternative to evaluate not less than the
562 quantity of Project Water historically transferred within the same geographical area.

563 (c) For a water transfer to qualify under subdivision (b) of this Article, such
564 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
565 years, for M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead
566 to land conversion; and be delivered to established cropland, wildlife refuges, groundwater

567 basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a
568 willing buyer; (iv) convey water through existing facilities with no new construction or
569 modifications to facilities and be between existing Project Contractors and/or the Contractor and
570 the United States, Department of the Interior; and (v) comply with all applicable Federal, State,
571 and local or tribal laws and requirements imposed for protection of the environment and Indian
572 Trust Assets, as defined under Federal law.

573 APPLICATION OF PAYMENTS AND ADJUSTMENTS

574 10. (a) The amount of any overpayment by the Contractor of the Contractor's
575 O&M, capital, interest and deficit (if any) obligations for the Year shall be applied first to any
576 current liabilities of the Contractor arising out of this Contract then due and payable.
577 Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a
578 refund, any amount of such overpayment, at the option of the Contractor, may be credited against
579 amounts to become due to the United States by the Contractor. With respect to overpayment,
580 such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or
581 claiming to have the right to the use of any of the Project Water supply provided for herein. All
582 credits and refunds of overpayments shall be made within 30 days of the Contracting Officer
583 obtaining direction as to how to credit or refund such overpayment in response to the notice to
584 the Contractor that it has finalized the accounts for the Year in which the overpayment was
585 made.

586 (b) All advances for miscellaneous costs incurred for work requested by the
587 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs
588 when the work has been completed. If the advances exceed the actual costs incurred, the
589 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
590 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

591 TEMPORARY REDUCTIONS--RETURN FLOWS

592 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
593 requirements of Federal law; and (ii) the obligations of the United States under existing
594 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting
595 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as
596 provided in this Contract.

597 (b) The Contracting Officer may temporarily discontinue or reduce the
598 quantity of Water Delivered to the Contractor as herein provided for the purposes of
599 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
600 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
601 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
602 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
603 Provided, That the United States shall use its best efforts to avoid any discontinuance or
604 reduction in such service. Upon resumption of service after such reduction or discontinuance,
605 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
606 Project Water which would have been delivered hereunder in the absence of such discontinuance
607 or reduction.

608 (c) The United States reserves the right to all seepage and return flow water
609 derived from Water Delivered to the Contractor hereunder which escapes or is discharged
610 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for
611 the United States any right to seepage or return flow being put to reasonable and beneficial use
612 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
613 claiming by, through, or under the Contractor.

614 CONSTRAINTS ON THE AVAILABILITY OF WATER

615 12. (a) In its operation of the Project, the Contracting Officer will use all
616 reasonable means to guard against a Condition of Shortage in the quantity of water to be made

617 available to the Contractor pursuant to this Contract. In the event the Contracting Officer
618 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
619 Contractor of said determination as soon as practicable.

620 (b) If there is a Condition of Shortage because of errors in physical operations
621 of the Project, drought, other physical causes beyond the control of the Contracting Officer or
622 actions taken by the Contracting Officer to meet legal obligations then, except as provided in
623 subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or
624 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

625 (c) Omitted.

626 (d) Project Water furnished under this Contract will be allocated in
627 accordance with the then-existing Project M&I Water Shortage Policy. Such policy shall be
628 amended, modified, or superseded only through a public notice and comment procedure.

629 (e) By entering into this Contract, the Contractor does not waive any legal
630 rights or remedies it may have to file or participate in any administrative or judicial proceeding
631 contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy
632 adopted after the effective date of this Contract was promulgated; (ii) the substance of such a
633 policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting
634 Officer does not waive any legal defenses or remedies that it may then have to assert in such a
635 proceeding.

636 13. Omitted.

637 RULES AND REGULATIONS

638 14. The parties agree that the delivery of M&I Water or use of Federal facilities
639 pursuant to this Contract is subject to the applicable provisions of Federal Reclamation law and
640 the applicable rules and regulations promulgated by the Secretary of the Interior under such law.

641

WATER AND AIR POLLUTION CONTROL

642 15. The Contractor, in carrying out this Contract, shall comply with all applicable
643 water and air pollution laws and regulations of the United States and the State of California, and
644 shall obtain all required permits or licenses from the appropriate Federal, State, or local
645 authorities.

646

QUALITY OF WATER

647 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
648 to this Contract shall be operated and maintained to enable the United States to deliver Project
649 Water to the Contractor in accordance with the water quality standards specified in subsection
650 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of
651 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
652 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
653 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
654 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

655 (b) The O&M of Project facilities shall be performed in such manner as is
656 practicable to maintain the quality of raw water made available through such facilities at the
657 highest level reasonably attainable as determined by the Contracting Officer. The Contractor
658 shall be responsible for compliance with all State and Federal water quality standards applicable
659 to surface and subsurface agricultural drainage discharges generated through the use of Federal
660 or Contractor facilities or Project Water provided by the Contractor within the Contractor's
661 Service Area.

662

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

663

664 17. (a) Omitted.
665 (b) Water or water rights now owned or hereafter acquired by the Contractor,
666 other than from the United States, may be stored, conveyed, and/or diverted through Project
667 facilities, subject to the completion of appropriate environmental documentation, with the

668 approval of the Contracting Officer and the execution of any contract determined by the
669 Contracting Officer to be necessary, consistent with the following provisions:

670 (1) The Contractor may introduce non-Project water into Project
671 facilities and deliver said water to lands within the Contractor's Service Area, including
672 Ineligible Lands subject to payment to the United States of an appropriate rate as determined by
673 the applicable Project ratesetting policy and the Project use power policy, if such Project use
674 power policy is applicable, each as amended, modified, or superseded from time to time. .

675 (2) Delivery of such non-Project water in and through Project facilities
676 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
677 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
678 available to other Project Contractors; (iii) interfere with the delivery of contractual water
679 entitlements to any other Project water service contractors; or (iv) interfere with the physical
680 maintenance of the Project facilities.

681 (3) The United States shall not be responsible for control, care, or
682 distribution of the non-Project water before it is introduced into or after it is delivered from the
683 Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United
684 States and their respective officers, agents, and employees, from any claim for damage to
685 persons or property, direct or indirect, resulting from the acts of the Contractor, its officers',
686 employees', agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any
687 source, or (ii) diverting such non-Project water into Project facilities.

688 (4) Diversion of such non-Project water into Project facilities shall be
689 consistent with all applicable laws, and if involving groundwater, consistent with any applicable
690 groundwater management plan for the area from which it was extracted.

691 (5) After Project purposes are met, as determined by the Contracting
692 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
693 of the facilities declared to be available by the Contracting Officer for conveyance and

694 transportation of non-Project water prior to any such remaining capacity being made available to
695 non-Project contractors.

696 OPINIONS AND DETERMINATIONS

697 18. (a) Where the terms of this Contract provide for actions to be based upon the
698 opinion or determination of either party to this Contract, said terms shall not be construed as
699 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
700 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
701 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
702 or unreasonable opinion or determination. Each opinion or determination by either party shall be
703 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is
704 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
705 any opinion or determination implementing a specific provision of Federal law embodied in
706 statute or regulation.

707 (b) The Contracting Officer shall have the right to make determinations
708 necessary to administer this Contract that are consistent with the provisions of this Contract, the
709 laws of the United States and of the State of California, and the rules and regulations
710 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation
711 with the Contractor to the extent reasonably practicable.

712 COORDINATION AND COOPERATION

713 19. (a) In order to further their mutual goals and objectives, the Contracting
714 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
715 with other affected Project Contractors, in order to improve the operation and management of the
716 Project. The communication, coordination, and cooperation regarding operations and
717 management shall include, but not be limited to, any action which will or may materially affect
718 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
719 Project financial matters including, but not limited to, budget issues. The communication,

720 coordination, and cooperation provided for hereunder shall extend to all provisions of this
721 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,
722 and determinations to be made by the respective party.

723 (b) Within 120 days following the effective date of this Contract, the
724 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
725 with interested Project Contractors to develop a mutually agreeable, written Project-wide
726 process, which may be amended as necessary separate and apart from this Contract. The goal of
727 this process shall be to provide, to the extent practicable, the means of mutual communication
728 and interaction regarding significant decisions concerning Project operation and management on
729 a real-time basis.

730 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
731 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
732 intent:

733 (1) The Contracting Officer will, at the request of the Contractor,
734 assist in the development of integrated resource management plans for the Contractor. Further,
735 the Contracting Officer will, as appropriate, seek authorizations for implementation of
736 partnerships to improve water supply, water quality, and reliability.

(2) The Secretary will, as appropriate, pursue program and project
implementation and authorization in coordination with Project Contractors to improve the water
supply, water quality, and reliability of the Project for all Project purposes.

737 (3) The Secretary will coordinate with Project Contractors and the
738 State of California to seek improved water resource management.

739 (4) The Secretary will coordinate actions of agencies within the
740 Department of the Interior that may impact the availability of water for Project purposes.

741 (5) The Contracting Officer shall periodically, but not less than
742 annually, hold division level meetings to discuss Project operations, division level water
743 management activities, and other issues as appropriate.

744 (d) Without limiting the contractual obligations of the Contracting Officer
745 under the other Articles of this Contract, nothing in this Article shall be construed to limit or
746 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the
747 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
748 protect health, safety, or the physical integrity of structures or facilities.

749 CHARGES FOR DELINQUENT PAYMENTS

750 20. (a) The Contractor shall be subject to interest, administrative and penalty
751 charges on delinquent installments or payments. When a payment is not received by the due
752 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
753 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
754 administrative charge to cover additional costs of billing and processing the delinquent payment.
755 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
756 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
757 due date. Further, the Contractor shall pay any fees incurred for debt collection services
758 associated with a delinquent payment.

759 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
760 in the Federal Register by the Department of the Treasury for application to overdue payments,
761 or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the
762 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
763 determined as of the due date and remain fixed for the duration of the delinquent period.

764 (c) When a partial payment on a delinquent account is received, the amount
765 received shall be applied, first to the penalty, second to the administrative charges, third to the
766 accrued interest, and finally to the overdue payment.

767 EQUAL OPPORTUNITY

768 21. During the performance of this Contract, the Contractor agrees as follows:

769 (a) The Contractor will not discriminate against any employee or applicant for
770 employment because of race, color, religion, sex, or national origin. The Contractor will take
771 affirmative action to ensure that applicants are employed, and that employees are treated during
772 employment, without regard to their race, color, religion, sex, or national origin. Such action

773 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
774 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other
775 forms of compensation; and selection for training, including apprenticeship. The Contractor
776 agrees to post in conspicuous places, available to employees and applicants for employment,
777 notices to be provided by the Contracting Officer setting forth the provisions of this
778 nondiscrimination clause.

779 (b) The Contractor will, in all solicitations or advertisements for employees
780 placed by or on behalf of the Contractor, state that all qualified applicants will receive
781 consideration for employment without discrimination because of race, color, religion, sex, or
782 national origin.

783 (c) The Contractor will send to each labor union or representative of workers
784 with which it has a collective bargaining agreement or other contract or understanding, a notice,
785 to be provided by the Contracting Officer, advising the said labor union or workers'
786 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of
787 September 24, 1965, and shall post copies of the notice in conspicuous places available to
788 employees and applicants for employment.

789 (d) The Contractor will comply with all provisions of Executive Order
790 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders
791 of the Secretary of Labor.

792 (e) The Contractor will furnish all information and reports required by said
793 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
794 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
795 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
796 such rules, regulations, and orders.

797 (f) In the event of the Contractor's noncompliance with the nondiscrimination
798 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
799 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared
800 ineligible for further Government contracts in accordance with procedures authorized in said
801 amended Executive Order, and such other sanctions may be imposed and remedies invoked as
802 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
803 otherwise provided by law.

804 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
805 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
806 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
807 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
808 action with respect to any subcontract or purchase order as may be directed by the Secretary of
809 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
810 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,

811 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
812 the United States to enter into such litigation to protect the interests of the United States.

813 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

814 22. (a) The obligation of the Contractor to pay the United States as provided in
815 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
816 obligation may be distributed among the Contractor's water users and notwithstanding the default
817 of individual water users in their obligations to the Contractor.

818 (b) The payment of charges becoming due hereunder is a condition precedent
819 to receiving benefits under this Contract. The United States shall not make water available to the
820 Contractor through Project facilities during any period in which the Contractor may be in arrears
821 in the advance payment of water rates due the United States. The Contractor shall not furnish
822 water made available pursuant to this Contract for lands or parties which are in arrears in the
823 advance payment of water rates levied or established by the Contractor.

824 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
825 obligation to require advance payment for water rates which it levies.

826 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

827 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
828 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
829 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
830 laws, as well as with their respective implementing regulations and guidelines imposed by the
831 U.S. Department of the Interior and/or Bureau of Reclamation.

832 (b) These statutes require that no person in the United States shall, on the
833 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
834 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
835 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
836 Contractor agrees to immediately take any measures necessary to implement this obligation,
837 including permitting officials of the United States to inspect premises, programs, and documents.

838 (c) The Contractor makes this agreement in consideration of and for the
839 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
840 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
841 Reclamation, including installment payments after such date on account of arrangements for
842 Federal financial assistance which were approved before such date. The Contractor recognizes
843 and agrees that such Federal assistance will be extended in reliance on the representations and
844 agreements made in this Article, and that the United States reserves the right to seek judicial
845 enforcement thereof.

846 24. Omitted.

847 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

848 25. In addition to all other payments to be made by the Contractor pursuant to this
849 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
850 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
851 of direct cost incurred by the United States for work requested by the Contractor associated with
852 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
853 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
854 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
855 contract administration.

856 WATER CONSERVATION

857 26. (a) Prior to the delivery of water provided from or conveyed through
858 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
859 shall be implementing an effective water conservation and efficiency program based on the
860 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
861 the conservation and efficiency criteria for evaluating water conservation plans established under
862 Federal law. The water conservation and efficiency program shall contain definite water
863 conservation objectives, appropriate economically feasible water conservation measures, and
864 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
865 Contract shall be contingent upon the Contractor's continued implementation of such water
866 conservation program. In the event the Contractor's water conservation plan or any revised water
867 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
868 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
869 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
870 shall be made under this Contract so long as the Contractor diligently works with the Contracting
871 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor

872 immediately begins implementing its water conservation and efficiency program in accordance
873 with the time schedules therein.

874 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
875 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall
876 implement the Best Management Practices identified by the time frames issued by the California
877 Urban Water Conservation Council for such M&I Water unless any such practice is determined
878 by the Contracting Officer to be inappropriate for the Contractor.

879 (c) The Contractor shall submit to the Contracting Officer a report on the
880 status of its implementation of the water conservation plan on the reporting dates specified in the
881 then existing conservation and efficiency criteria established under Federal law.

882 (d) At five-year intervals, the Contractor shall revise its water conservation
883 plan to reflect the then-current conservation and efficiency criteria for evaluating water
884 conservation plans established under Federal law and submit such revised water management
885 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
886 determine if the water conservation plan meets Reclamation's then current conservation and
887 efficiency criteria for evaluating water conservation plans established under Federal law.

888 (e) If the Contractor is engaged in direct ground-water recharge, such activity
889 shall be described in the Contractor's water conservation plan.

890 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

891 27. Except as specifically provided in Article 17 of this Contract, the provisions of
892 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
893 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
894 Area. Any such water shall not be considered Project Water under this Contract. In addition,
895 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
896 any water user within the Contractor's Service Area acquires or has available under any other
897 contract pursuant to Federal Reclamation law.

898 28. Omitted.

899 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

900 29. The expenditure or advance of any money or the performance of any obligation of
901 the United States under this Contract shall be contingent upon appropriation or allotment of
902 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
903 obligations under this Contract. No liability shall accrue to the United States in case funds are
904 not appropriated or allotted.

905 BOOKS, RECORDS, AND REPORTS

906 30. (a) The Contractor shall establish and maintain accounts and other books and
907 records pertaining to administration of the terms and conditions of this Contract, including: the
908 Contractor's financial transactions, water supply data, and Project land and right-of-way
909 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
910 data; and other matters that the Contracting Officer may require. Reports thereon shall be
911 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
912 Officer may require. Subject to applicable Federal laws and regulations, each party to this
913 Contract shall have the right during office hours to examine and make copies of the other party's
914 books and records relating to matters covered by this Contract.

915 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
916 books, records, or other information shall be requested from the Contractor by the Contracting
917 Officer unless such books, records, or information are reasonably related to the administration or
918 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
919 time within which to provide the requested books, records, or information.

920 (c) Omitted.

921 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

922 31. (a) The provisions of this Contract shall apply to and bind the successors and
923 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
924 therein shall be valid until approved in writing by the Contracting Officer.

925 (b) The assignment of any right or interest in this Contract by either party
926 shall not interfere with the rights or obligations of the other party to this Contract absent the
927 written concurrence of said other party.

928 (c) The Contracting Officer shall not unreasonably condition or withhold his
929 approval of any proposed assignment.

930

SEVERABILITY

931 32. In the event that a person or entity who is neither (i) a party to a Project contract,
932 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
933 an association or other form of organization whose primary function is to represent parties to
934 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
935 enforceability of a provision included in this Contract and said person, entity, association, or
936 organization obtains a final court decision holding that such provision is legally invalid or
937 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
938 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
939 final court decision identify by mutual agreement the provisions in this Contract which must be
940 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
941 The time periods specified above may be extended by mutual agreement of the parties. Pending
942 the completion of the actions designated above, to the extent it can do so without violating any
943 applicable provisions of law, the United States shall continue to make the quantities of Project
944 Water specified in this Contract available to the Contractor pursuant to the provisions of this
945 Contract which were not found to be legally invalid or unenforceable in the final court decision.

946

RESOLUTION OF DISPUTES

947 33. Should any dispute arise concerning any provisions of this Contract, or the
948 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
949 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
950 Officer referring any matter to Department of Justice, the party shall provide to the other party
951 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
952 required where a delay in commencing an action would prejudice the interests of the party that
953 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
954 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,

955 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
956 United States may have.

957 OFFICIALS NOT TO BENEFIT

958 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
959 Contractor shall benefit from this Contract other than as a water user or landowner in the same
960 manner as other water users or landowners.

961 CHANGES IN CONTRACTOR'S SERVICE AREA

962 35. (a) While this Contract is in effect, no change may be made in the
963 Contractor's Service Area by inclusion or exclusion of lands, dissolution, consolidation, merger,
964 or otherwise, except upon the Contracting Officer's written consent.

965 (b) Within 30 days of receipt of a request for such a change, the Contracting
966 Officer will notify the Contractor of any additional information required by the Contracting
967 Officer for processing said request, and both parties will meet to establish a mutually agreeable
968 schedule for timely completion of the process. Such process will analyze whether the proposed
969 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
970 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
971 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
972 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
973 Contracting Officer shall comply with the NEPA and ESA. The Contractor will be responsible
974 for all costs incurred by the Contracting Officer in this process, and such costs will be paid in
975 accordance with Article 25 of this Contract.

976 FEDERAL LAWS

977 36. By entering into this Contract, the Contractor does not waive its rights to contest
978 the validity or application in connection with the performance of the terms and conditions of this
979 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
980 the terms and conditions of this Contract unless and until relief from application of such Federal

981 law or regulation to the implementing provision of the Contract is granted by a court of
982 competent jurisdiction.

983 NOTICES

984 37. Any notice, demand, or request authorized or required by this Contract shall be
985 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
986 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom,
987 California 95630-1799, and on behalf of the United States, when mailed, postage prepaid, or
988 delivered to the Board of Directors of the El Dorado Irrigation District, 2890 Mosquito Road,
989 Placerville, California 95667. The designation of the addressee or the address may be changed
990 by notice given in the same manner as provided in this Article for other notices.

991 CONFIRMATION OF CONTRACT

992 38. The Contractor, after the execution of this Contract, shall furnish to the
993 Contracting Officer evidence that pursuant to the laws of the State of California, the Contractor
994 is a legally constituted entity and the Contract is lawful, valid, and binding on the Contractor.
995 This Contract shall not be binding on the United States until such evidence has been provided to
996 the Contracting Officer's satisfaction.

Contract No. 14-06-200-1357A-LTR1

EXHIBIT A

El Dorado Irrigation District

EXHIBIT B
2004 Water Rates and Charges
EL DORADO IRRIGATION DISTRICT

	2004 Rates Per Acre-Foot <u>M&I</u>
COST-OF-SERVICE (COS) RATE: (1 st Tier - ≤80% of Contract Total)	\$25.83
2ND TIER [>80% <90% of Contract Total] (M&I Full Cost Rate + COS Rate/ 2)	\$28.48
3RD TIER [> 90% of Contract Total] (M&I Full Cost Rate)	\$31.13
M&I FULL COST RATE: Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended:	\$31.13
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND* Restoration Payments [3407(d)(2)(A)]	\$15.64

* The surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1 -9/30).

Note: Additional detail of rate components is available on the Internet at <http://www.mp.usbr.gov/cvpwaterrates/>.